

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

LAVONIA BOSTIC

v.

ETHICON INC. AND  
JOHNSON AND JOHNSON

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CIVIL ACTION

NO. 20-6533

**ORDER**

**AND NOW**, this 29th day of March, 2022, upon consideration of Defendants' Motion to Dismiss (Docket No. 13) and all documents filed in connection therewith, as well as the Hearing held on December 2, 2021, and for the reasons stated in the accompanying Memorandum, **IT IS HEREBY ORDERED** as follows:

1. The Motion to Dismiss is **GRANTED WITH PREJUDICE** as to Plaintiff's strict liability claims for design defect and failure to warn in Counts II and IV, her claim for breach of implied warranty in Count VII, and her claim for unjust enrichment in Count XIII.

2. The Motion to Dismiss is **GRANTED WITHOUT PREJUDICE** as to Plaintiff's negligent manufacturing defect claim in Count I, her negligent and strict liability manufacturing defect claims in Count III, her claims for common law fraud in Count V, breach of express warranty in Count VI, constructive fraud in Count VIII, negligent misrepresentation in Count IX, and fraudulent concealment in Count XII. Plaintiff may file a second amended Complaint with respect these claims no later than April 12, 2022.

3. The Motion is **WITHDRAWN** with respect to Plaintiff's claims for negligence in Count I (except with respect to negligent manufacturing defect); negligent design defect in Count II; negligent failure to warn in Count IV; and negligent infliction of emotional distress in Count X. Plaintiff may amend these claims in her second amended complaint.

4. Plaintiff's claims for gross negligence (Count XI) and punitive damages (Count XIV) are **WITHDRAWN** by agreement of the parties, without prejudice to Plaintiff seeking punitive damages as a remedy.

BY THE COURT:

/s/ John R. Padova

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John R. Padova, J.